



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Contact International Corporation

File: B-241942

Date: March 12, 1991

Scott Arnold, Esq., Howrey & Simon, for the protester.
David M. Eppsteiner, Esq., McKenna & Cuneo, for Servrite International, Ltd., and Jody Vona for Dairy Maid Dairy, Inc., interested parties.
John A. Dodds, Esq., Department of the Air Force, for the agency.
Amy M. Shimamura, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In the absence of evidence indicating that the agency unfairly created an incumbent's advantage, a contracting agency is not required to equalize competition by including an evaluation factor in the solicitation to account for the cost of milk trucks that the agency required the incumbent contractor to acquire under its contract, title to which was vested in the contractor.

DECISION

Contact International Corporation protests request for proposals (RFP) No. F62321-90-R-0093, issued by the Department of the Air Force, Kadena Air Force Base, Okinawa, Japan, for a 1 year requirements contract, with 4 option years, for the operation and maintenance of a government-owned milk and dairy products plant. Contact contends that the Air Force unfairly provided the incumbent contractor, Servrite International, Ltd., with milk trucks. The firm argues that the trucks should be considered to be owned by the government, and that the agency, therefore, should provide the trucks to the awardee under the RFP or equalize the competition by providing an evaluation factor in the RFP to account for the cost of the trucks.

We deny the protest.

050820 / 143375

Under the prior requirements contract, which was awarded to Servrite in 1985 for 1 year and 4 option years, Servrite was paid on a fixed unit price basis for dairy products produced and delivered under the contract. Under the contract, refrigerated milk trucks were furnished by the government. The contract also contemplated the replacement of the government-furnished trucks as they were phased out as unserviceable during the 5 year contract term.

In July 1987, the Air Force revised Air Force Manual 77-310 to articulate an Air Force policy not to provide motor vehicles, other than those designated as "military-unique," to government contractors. For this reason and because appropriated funds were not available to fund the replacement of the government-owned vehicles, the Air Force determined that the only means available to replace the milk trucks to complete performance of the 1985 contract was through contractor-furnished vehicles.


The agency and Servrite negotiated modification No. 0009 dated October 5, 1988, to replace the six unserviceable government-furnished milk trucks with contractor-furnished trucks for an equitable adjustment of \$282,023. The record indicates that Servrite was not reimbursed its total costs for the acquired trucks. The payments under this modification were primarily amortized in the fixed prices for the dairy products to be produced in the remaining contract life from November 1, 1988, through September 30, 1990.

To the extent that Contact contests the propriety of the modification to the Servrite contract wherein Servrite was required to acquire the trucks, this is a matter of the administration of an existing contract, not subject to our Office's bid protest jurisdiction. See 4 C.F.R. § 21.3(m)(1) (1990); McDermott Shipyards, Division of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121. Since the government does not have title to the trucks, it may not provide them as government-furnished property to the awardee under this RFP. We are aware of no requirement that the government otherwise acquire trucks to be supplied to the successful contractor; indeed, as indicated above, this would be inconsistent with Air Force policy.

Contact's primary argument is that the government should provide for an evaluation factor representing the value of the trucks in order to equalize the competition, since most of the vehicle cost was allowed to be amortized over the last 2 years of Servrite's contract. Contact asserts that this is essentially the same as providing government-furnished property to only one offeror, a matter which should be accounted for in a proper evaluation scheme.

Since the record establishes that Servrite, not the government, has title to the trucks and there is no evidence in the record that the government unfairly created the incumbent's advantage, the Air Force is not required to equalize the advantage. GTE Automatic Elec., Inc., B-209393, Sept. 19, 1983, 83-2 CPD ¶ 340. In this regard, the record shows the Air Force found it had no reasonable choice but to negotiate with Servrite to acquire these replacement trucks, a possibility that was recognized in the contract. Moreover, the record indicates that modification No. 0009 was only executed after lengthy negotiations to assure a fair and reasonable price and that the government did not pay Servrite the entire cost of the trucks. The fact that the incumbent, by virtue of its prior contract, was able to previously acquire and amortize the cost of equipment necessary to perform the proposed contract is a legitimate competitive advantage, which the government is not required to equalize. See B.B. Saxon Co., Inc., 57 Comp. Gen. 501 (1978), 78-1 CPD ¶ 410. The Air Force therefore is not required to provide in the RFP for an evaluation factor representing the cost of the trucks.

The protest is denied.


for James F. Hinchman
General Counsel